19 54.

Department of Revenue

OFFICE Board of Revenue

STATION Marion

No. 706

Dated 8. 3. 39

B. 995, 3

8-MAR.1939

C.F. 15

file M. F. 4

(SUBJECT.)

Smith - (St. Kenora) — Kenora

G. S. 1938 - 633 — Encroachment

Quarry claim — Kenora [illegible]

Mining claim — S. W.

Fish — Fisheries — Shoal Lake

Date of hearing 13-3-39

R.P 2-9
B 995

Ref.A3-8219-38. South Kanara Collector's Office,
Camp Puttur, dated 20 - 2 -1939.

From

Sri Diwan Bahadur M.V.Vellodi, B.A.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Settlement,
M a d r a s.

Sir,

Suits - Karkal Dt. Munsif's court - O.S.No. 663/38 - encroachment - warg claim - Karkal Taluk -Marur village -S.No.119/1B and 8/4B - defence -sanction - request.

PP5-8 C/F

I enclose a copy of the plaint in the above suit which is for a declaration that S.Nos. 119/1B and 8/4B of Marur village, Karkal Taluk form the warg land of the Plaintiff and for restraining the Defendant (Government) by a permanent injunction from evicting the Plaintiff from the suit properties.

Para VI PP7-8 C/F

2. The suit properties form portion of S.Nos.119/1 and 8/4 respectively. S.No. 119/1 stands registered as assessed waste dry through which the Local Fund road No. 10 A passes, while S.No. 8/4 stands registered as Local Fund road poramboke. An eye sketch of these plots is enclosed. S.No. 119/1B measures about 4 cents and contain at present an old mud wall enclosure, a small portion of a bettu field, 1 cocoanut tree, 1 dead cocoanut tree, 3 jack trees, 2 jack plants, 1 wild jack plant, 1 dead cashew tree, 2 cashew trees, 1 nux vomica tree and 2 mango plants while S.No. 8/4B measures 2 cents and contains one mango tree, one jack tree and a thorny fence. These plots are lower in level than the road proper.

3. In 1935 the usufruct of 3 jack trees standing in the suit properties was sold by auction by the Local Fund Section Officer. The Plaintiff who is the owner of the adjoining land S.No. 8/3 objected to this and requested the President, Dt. Board not to hold the sales as the trees were planted and reared by him. Enquiry held in connection with his objection petition disclosed that the plots had been encroached upon by him. The Dt. Board Engineer having come to the final conclusion that the encroachments were objectionable, the President, Dt.Board, South Kanara in his endorsement N.Dis.C.6527-36-A5 dated 28-7-36 requested the Tahsildar, Karkal, to take necessary action. Subsequently, in his N.Ref. E.R. 63/36-37 dated 14-4-1937 the President requested the Tahsildar to get only the encroachment in S.No. 119/1B removed and stated that steps would be taken by him for the acquisition of S.No. 8/4B. The age of the encroachment in S.No.8/4B having been estimated at only 35 years, the Tahsildar took steps under the Land Encroachment Act for the removal of the encroachments in both the plots after obtaining the Revenue Divisional Officer's approval.

P75 CF (M)

P34 CF (M)

P81 CF (M)

PP32-7 of Madras Code Vol. II Rule 24

4. On the issue of the notice under section 7 of the Land Encroachment Act the Plaintiff approached the Tahsildar for a reconsideration of the order requesting that the encroachments might be either ignored or assigned to him under the darkhast rules at the same time urging warg claim over the land. His petition was rejected by the Tahsildar. Thereafter, the Revenue Divisional Officer passed an eviction order and issued notices under section 6 of the Act. The notice-giver then appealed to me but I found that there were no grounds to interfere and accordingly dismissed his appeal in my D.Dis. 628/38 dated 2-7-38. Thereupon, he sent two suit notices which were recorded in my D.Dis.4503-38 dated 26-7-38 and D.Dis. 5213-38 dated 17-8-38. He was finally evicted from the land on 30-8-1938..

P635 —do

PP634-5 do

P21 CF (C)

P5 CF (K)

P7 CF (L)

P99 CF (M)

5. The main grounds in the plaint are that the suit

properties form portion of the Plaintiffs warg land left out of demarcation by mistake at the last survey and that the fruit bearing trees standing therein were planted either by the Plaintiff or his predecessor-in-title. He has not produced any documentary evidence in support of his contention. On the other hand, the enquiry held by the Revenue Divisional Officer, Coondapoor, in connection with his appeal shows that the encroachments (except a tiny portion of the bettu field measuring 810 Sq.links) are real and that all the trees except the two cocoanut trees are of spontaneous growth - please see his report L.Dis. 1435-38 dated 23-6-1938. The plots are, moreover, needed for road purposes - the road now being narrow and winding. I do not, therefore, think that the Plaintiff has any case whatever. The Government Pleader, Mangalore, who was consulted by me states that the Government have a valid defence to the suit. I enclose a copy of his letter Ref.No. 88/39 dated 12-2-39 together with a draft written statement and request that the Board may be pleased to sanction the defence of the suit and to approve of the draft written statement.

6. The plaint in this case is dated 3-11-38. A copy of it was received by me along with the summons on 5-12-1938. The suit stands posted to 13-3-1939. The records noted in the margin are enclosed.

1. Karkal Tahsildar's Dis.E.C.D.B.4/45.
2. Collector's D.Dis.628-38.
3. " D.Dis. 4503-38.
4. " D.Dis.5213-38.

For Collector.

10.2.39.

In the Court of the Dt. Munsif of Karkal.

Original Suit No. 663/1938.

Between:

Vasudeva Hegde ... Plaintiff.

and

The Province of Madras represented by the Collector of South Kanara. ... Defendant.

Plaint under section 26 and Order VII, Rule 1-6 of Act V of 1908.

Date 3-11-1938.

The above-named plaintiff begs to state as follows:

I. That the plaintiff is the son of Naravana Hegde, Land lord residing at Marur village, Karkal Taluk.

The address for service of processes on the plaintiff is as stated above.

II. That the defendant is the Province of Madras and is represented by the Collector of South Kanara.

III.(a) That the plots marked A and B, coloured red in the accompanying plan and more fully described in the Schedule A hereto belong to the plaintiff on warg right, being portions of the adjoining land covered by Muli warg No.25 owned by the plaintiff. The said plots are about 5 or 6 feet below the level of the road adjoining them on the West and are on the same level as the adjoining warg property of the plaintiff and contain a portion of the field and some old fruit bearing trees planted either by the plaintiff or his predecessors-in-title. These plots are further enclosed by an old boundary wall or fence more than 100 years old which protects the property from the trespass of the cattle or men from the adjoining public road. The property so enclosed has been in the uninterrupted possession and enjoyment of the plaintiff and his predecessors-in-title from time immemorial.

(b) That recently the Revenue Department started proceedings under the Madras Land Encroachment Act against the plaintiff alleging that the said plots are portions of the Government land and that the plaintiff has encroached thereon. Though the plaintiff brought to the notice of the Revenue Officials that there has been no such encroachment, they have overruled his contentions and are taking further proceedings under the said Act with a view to take forcible possession thereof. An appeal to the Collector of South Kanar has also proved useless.

(c) That during the course of the said Land Encroachmen proceedings the plaintiff came to know that the said plots A and B though they form part of the adjoining land belonging to the plaintiff have, on account of wrong survey demarcation, been shown as part of S.Nos.119 and 8/4 which are Government land. The said mistake must have arisen on account of the incorrect survey due to the road taking a bend at this particu place and these two small bits of land about 5 cents and 1 cen in extent must have been left out of account in demarcating th land belonging to the plaintiff in ignoring the bends accordin to the sarasari method adopted by the survey officials during the Settlement of 1904.

(d) The plaintiff submits that notwithstanding the wrong survey demarcation the said plots have continued to be warg land and enjoyed as such by the plaintiff and his predecessors in-title as part and parcel of their warg land. The said survey mistake in no way affects the right of the plaintiff for the said land and possession thereof and the defendant has no right or title to the said property.

(e) Under such circumstances the action of the Government in starting Land Encroachment proceedings is wrongful and ultra vires of their power. As the defendent persists in contending

that the said plots A and B are Government land and has threatened to evict plaintiff therefrom, plaintiff is constrained to file this suit for a declaration of his title thereto and for other necessary consequential reliefs. He has given defendant a notice under Section 80 C.P.C. as required by law intimating his intention of filing this suit. Plaintiff has received a reply thereto stating that the said notice has been recorded.

(f) Plaintiff understands that since the giving of the above-said notice under Section 80 C.P.C. the Revenue officials under the authority of the defendant have got up certain documents purporting to be evidence of the taking possession of the property by the defendant though as a matter of fact the said plots still continue to be in the possession of the plaintiff. Hence the plaintiff is constrained to ask in the alternative for relief for ---- possession of the said plots in case the defendant persists in contending that it has taken possession of the suit plots.

IV. Hence this suit for necessary reliefs the cause of action for which arose on 4-7-1938, on which date the appeal of the plaintiff to the Collector of South Kanara was dismissed at Marur where the properties are situate within the jurisdiction of this Court.

V. Plaintiff values the reliefs sought in this suit at Rs.30-0-0 both for Court Fees and Jurisdiction and a Court fee of Rs.3-5-0 is paid herewith.

VI. Prays therefore for Judgment and Decree

1. Declaring that the plots marked A and B in the accompanying plan and more fully particularised in the Schedule A hereto is the warg property of the plaintiff and restraining the defendant by a permanent injunction from taking

any further action under the Land Encroachment Act or in any way interfering with the possession of the plaintiff. 15- 0- 0

This relief is valued at Rs.15/- under section IV C of the Court Fees Act.

or in the alternative

if the defendant contends that he has taken possession thereof, then directing the defendant to deliver possession of the property to the plaintiff 30- 0- 0

This relief is valued at Rs.30/-. The market value of the said plots under Section V of the Court Fees Act.

As court fee is paid on relief (2) which is higher in value to relief (1) no court fee is given on relief (1).

Schedule of property.

Plot marked A in the plan (annexed) is of Marur village, Karkal Taluk, classified as S.No.119/1B and plot marked B in the said plan is classified as S.No.8/4B. Plot A measures 5 cents and plot B measures 1 cent. Plaintiff submits that the said classification is not correct.

List of Documents. (Order VII Rule 14)

No documents have been filed with the plaint. Original plaint verified and filed on 4.11.1938.

Sd/- xx xx xx
Pleader for Plaintiff

/True copy

HR/22.2.

Letter-from the Government Pleader and Public Prosecutor, Mangalore.
To-the Collector of South Kanara, Mangalore.
Dated-Mangalore, 12th February 1939.
No.-Ref.No.A-88/[illegible]

Suits - Karkal District Munsif's Court - O.S.No. 663/38 - Encroachment - warg claim - Karkal Taluk - Marur village - S.No.119/1B and 8/4B.

Your Ref:- A3-8219/38, dated 10th February 1939.

xx xx xx xx

I am returning herewith the draft written statement with some minor alterations and three new paragraphs setting out certain legal objections to the sustainability of the suit. The Government in my opinion have a valid defence to the suit

I notice that the suit is in the Karkal Court, the conduct of which would be in the hands of the pleader for the Government in that Court. As the responsibility for the conduct of Government suits there is on him, I am sure he would appreciate a draft written statement being sent to him for scrutiny in the first instance, and then, if you so desire, to have his written statement sent on to me. If you approve of my suggestion, I would request that such a practice may be directed to be observed in the drawing up of pleadings in Courts outside the Head quarters.

/True Copy/

For Collector.

22.2.38

M.D'S.21/2.

ask D.C to have
V.Ed.
Enclosed
9.3.39

DRAFT FOR APPROVAL.

Date. Initials. 3.35 pm

When received for fair copying ..		
When copied ..		
When examined..		
When signed ..		
When despatched.		

SUBJECT:— Suits - (S. Kanara) — Karkal D.M.C — 6. S. 1938 - 663 - Encroachment - Defence - way claim - Karkal Tk. - Manure rge — S. No. 119/1B & 8/4 B — Defence — Sanctioned —

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO*:—

P No. 995 From the Collr. of S. Kanara No. Rev A.3 dated 20.2.1939. Q

" _____ " _____ " 8219-38 " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

Order- Ms. Resolution Rout: No. 706, dated 8.3.1939.

Method
M
8/3

Proceed with despatch
& Corr
8.3.39.

Collr. of S. Kanara
with records

the Board sanctions the defence of the suit & approves the Draft W. Statt. contd. by the Collr. with his D.O. cited above.

CM
8/3/39
M
8/3

M
8/3/39

Suits – (S. Kanara) – Karkal

A.M.C – O.S. 1938-663 – Encroach

ment – wrong claim – Karkal

Marma Vge. – S. No. 119/1B &

8/4B – Defence – Jamkhan –

Rejected –

Papers for ... K

pp 1-3 C+ – 13.995 – From the Collr.,

S. Kanara Rep. A...

8217-38 dt 20...

(X) 1. Sketch at (X).

(L) 2. Cml. D.Rs 5213/38

(K) 3. do 4503/38

(C) 4. do 628/38

(M) 5. Tlc. D.Rs. E.C.D

B4/45

dt 10.11.38

To A.S.

Sketch at (X)

cont 4 contd

2 – 2. The encroachments by the plaintiff, M. Vasudeva Hegad are in S. No. 119/1B & 8/4B of Marma Vge, Karkal Tk. They form portions of S. Nos. 119/1 (registered as waste dry, assessed) and 8/4 (registered as Local Fund road poromboke). In 1935 the usufruct of 3 jack trees standing on the suit properties was sold by the Local Fund Section of the Taluk Office. The plaintiff objected to this action and urged that the trees were planted & reared by him. The Enquiry held in connection with the objection petn. showed that the plaintiff had encroached

the suit plots & that the encroachments were objectionable. P75 CF (M)
As the age of the Encroachment was estimated at about 35 years the Dt. P81 CF (M)
Board could not exercise its rights of eviction ~~as to be~~
~~plaintiff was found to do~~ ~~things~~
in view of the instructions in P 107
the note under B.S.O V:
B.S.O 26-11. The Dist. took B.S.O. 58
steps to remove the encroachments in question. The Govt refused to interfere on P21 CF (C)
behalf of the ~~pet~~ plaintiff
Hence the plaintiff filed
O.S. 663/38 against the Govt.
contending that the suit plots
119/1B & 84B ~~of~~ form his
way land & for retaining
the Govt by a permanent
injunction from evicting the
plaintiff from the suit plots.

3. The main allegations
in the plaint are the suit
plots belong to him on way
right & that some of the trees thereon
were planted by himself or
his predecessors in title & that
the lands in question were

wrongly shown as portions of int. land on account of the incorrect survey.

4. The Coll. reports that the plaintiff has not filed any documentary evidence in support of his contention & that the encroachments are real. The suit plots are needed for road purposes - The road being narrow & winding. The plaintiff cannot establish his title to the suit plots since the age of the ~~trees~~ encroachments is reported to be about 35 years only. The local G.P. considers that the Govt. have a valid defence to the Suit.

The Board may sanction the defence of the Suit & approve the draft written Statement submitted by the Coll.

pp 11-13 C/-

Ag
6/3/39

SECY.
7-MAR 939

Ls
7.3.39

Um
7.3.39

B.P. No. Mis-707

Dated 8/3/39

Single Member.

Two Members.

Full Board.

A.D.S. Asst. Secretary.

I-A. & L.R. | Land Rev. | Sett. | Sep. Rev. | J.S. Secy.

---

(1) Open file seen by

(2) Final draft seen by

(3) Now circulated to

(4) Initials

Passed for record.

Secretary
Joint Secretary.

~~A.S. (C.W.)~~

A. S. (L.R.) 11/3/39

A. S. (Sett.)

A. S. (~~xxxxxxxx~~) Excise.

A.D.S. & L.R.

~~I-A.~~

Note.- Entries not required to be scored out.